Neutral Citation Number: [2024] EWHC 2576 (KB)

Case No: QB-2022-001317

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/10/2024

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

(1) THURROCK COUNCIL	**Claimants**
(2) ESSEX COUNTY COUNCIL	
- and -	
(1) MADELEINE ADAMS	**Defendants**
(2)-(222) OTHER NAMED DEFENDANTS AS LISTED AT SCHEDULE 1 TO THE CLAIM FORM	
(223) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH THE FREE FLOW OF TRAFFIC ON TO, OFF OR ALONG THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM	
(224) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, AND WITHOUT THE PERMISSION OF THE REGISTERED KEEPER OF THE VEHICLE, ENTERING, CLIMBING ON, CLIMBING INTO, CLIMBING UNDER, OR IN ANY WAY AFFIXING THEMSELVES OR AFFIXING ANY ITEM TO ANY VEHICLE TRAVELLING ON TO, OFF, ALONG OR WHICH IS ACCESSING	

OR EXITING THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM

(225) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH VEHICULAR ACCESS TO, INTO OR OFF ANY PETROL STATION OR ITS FORECOURT WITHIN THE ADMINISTRATIVE AREA OF THURROCK (AS MARKED ON THE MAP AT ANNEXE 2 TO THE CLAIM FORM)

(226) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, CAUSING THE BLOCKING, ENDANGERING, SLOWING DOWN, OBSTRUCTING, PREVENTING OR OTHERWISE INTERFERING WITH VEHICULAR ACCESS TO OR FROM ANY PETROL STATION OR ITS FORECOURT WITHIN THE ADMINISTRATIVE AREA OF ESSEX (AS MARKED ON THE MAP AT ANNEXE 3 TO THE CLAIM FORM)

(227) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, BLOCKING, PREVENTING OR OTHERWISE INTERFERING WITH THE OFFLOADING BY DELIVERY TANKERS OF FUEL SUPPLIES AND/OR THE REFUELLING OF VEHICLES AT ANY PETROL STATION WITHIN THE ADMINISTRATIVE AREA OF THURROCK (AS MARKED ON THE MAP AT ANNEXE 2 TO THE CLAIM FORM)

(228) PERSONS UNKNOWN, WHO ARE FOR THE PURPOSE OF PROTESTING, BLOCKING, PREVENTING OR OTHERWISE INTERFERING WITH THE OFFLOADING BY DELIVERY TANKERS OF FUEL SUPPLIES AND/OR THE REFUELLING OF VEHICLES AT ANY PETROL STATION WITHIN THE ADMINISTRATIVE AREA OF ESSEX (AS MARKED ON THE MAP AT ANNEXE 3 TO THE CLAIM FORM)

(229) PERSONS UNKNOWN WHO ARE TRESPASSING ON, UNDER OR ADJACENT TO THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM BY UNDERTAKING EXCAVATIONS, DIGGING, DRILLING AND/OR TUNNELLING WITHOUT THE PERMISSION OF THE RELEVANT HIGHWAY AUTHORITY

(230)-(229) OTHER NAMED DEFENDANTS AS LISTED AT SCHEDULE 1 TO THE CLAIM

FORM

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Caroline Bolton and Natalie Pratt (instructed by **Sharpe Pritchard LLP**) for the **Claimants**
The Defendants did not appear and were not represented

Hearing dates: 12 July 2024

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Approved Judgment

This judgment was handed down remotely at 10:30 on 11 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. Following a hearing on 12 July 2024 I granted the continuation of an injunction granted by Foster J on 27 January 2023, and made other orders, against Persons Unknown. Foster J's order was itself the continuation of an injunction initially granted by Ritchie J in April 2022, and then subsequently renewed. These are my reasons.

2. The Claimants did not at the hearing seek a final injunction against the remaining named Defendants. There is to be a hearing in October 2024 in relation to them and the order of Foster J will remain in effect until then pursuant to an order of Collins Rice J dated 19 Aril 2024. There are now in fact only a relatively small number of named Defendants remaining; most have reached settlement with the Claimants by way of undertaking.

Background

Events from April 2022

3. The Claimants bring these claims pursuant to the Local Government Act 1972, s 222 and the Highways Act 1980, s130(5). Thurrock Council (Thurrock) is the Local Highway Authority for the Borough. Essex County Council (ECC) is the Local Highway Authority for the County.

4. The claim is brought in response to protest activity in the administrative area of Thurrock (the Borough) in April 2022 by those associated with the Just Stop Oil group (JSO). As is well-known, JSO is one of a number of groups who protest about environmental concerns and climate change by engaging in direct action, often against infrastructure which it regards as being involved with fossil fuels such as fuel storage facilities, pipelines, and airports. For example, over the summer of 2024 the High Court granted a number of injunctions on the applications of airport operators to prevent apprehended trespass and nuisance at their airports which Just Stop Oil and others had threatened to carry out.

5. The Borough is especially attractive to this group as a venue for protest as it houses several COMAH (Control of Major Hazards) sites, namely fuel/oil terminals. These are:

    a. The Navigator Fuel Terminal, Oliver Road, West Thurrock RM20 3ED. The main entrance to the site is off Burnley Road/Oliver Road in West Thurrock. There is a secondary exit from the site on Oliver Close;

    b. The Esso Fuel Terminal, London Road, Purfleet RM19 1RS. The primary access route to the site is off the A1090, London Road, Purfleet; and

    c. Exolum Storage Ltd, off Askews Farm Lane, London Road, Grays RM17 5YZ.

6. The Oikos fuel terminal is also located nearby in Canvey Island, which is within the administrative area of Essex (the County). As I shall explain, protesters have targeted fuel supplies to these terminals and sought to disrupt them.

7. The injunction sought on this continuation application is the sort of 'newcomer injunction' which have been granted by the courts in protest and other cases in recent years. The evolution of this sort of injunction, and the relevant legal principles, were set out by the Supreme Court in *Wolverhampton City Council and others v London Gypsies and Travellers and others* [2024] 2 WLR 45. I will refer to this as *Wolverhampton Travellers* case.

8. Recent examples of such injunctions are: *Jockey Club Racecourses Ltd v Persons Unknown* [2024] EWHC 1786 (Ch); *Exolum Pipeline System Ltd and others v Persons Unknown* [2024] EWHC 1015 (KB); *Valero Energy Ltd v Persons Unknown* [2024] EWHC 134 (KB); *Multiplex Construction Europe Ltd v Persons Unknown* [2024] EWHC 239 (KB); *High Speed 2 (HS2) Limited v Persons Unknown* [2024] EWHC 1277 (KB); *Arla Foods Ltd v Persons Unknown* [2024] EWHC 1952 (Ch), [75]; and *Wolverhampton City Council v Persons Unknown* [2024] EWHC 2273 (KB). The legal basis for newcomer injunctions, and the principles which guide whether they should be granted in a particular case, are therefore now firmly established.

9. The Claimants seek the continuation of the injunction against the seven above-defined categories of Persons Unknown. They rely upon the Third Witness Statement of Adewale Adesina (Senior Emergency Planning and Resilience Officer with Thurrock) dated 26 June 2024 (Adesina 3) and Detective Superintendent Stephen Jennings of Essex Police, dated 23 March 2024 (Jennings), as well as the historic evidence filed in support of the earlier applications. There is also a short updating statement from Adam Rulewski, a lawyer with the London Borough of Barking and Dagenham, concerning events which occurred shortly before the hearing involving Just Stop Oil.

10. The matter first came before the Court on 24 April 2022, when the Claimants made an out of hours and without notice application for interim injunctive relief against (a) the 222 named Defendants set out at Schedule 1 to the Claim Form; and (b) the seven categories of Persons Unknown. The application was granted by Ritchie J (the Injunction Order). This application was made following a first wave of protests in the Borough.

11. The acts of protest experienced by the Borough are set out in detail in the First and Second Witness Statements of Adewale Adesina and Temporary Detective Chief Superintendent Cronin of 23 April 2022 (Cronin). By way of short summary, the protests commenced on 1 April 2022, and events of protest were attended by Essex Police on 1, 2, 3, 4, 5, 6, 8,11 ,13 and 15 April 2022. In that time, there were several hundred arrests made in the Borough alone for offences that are alleged to have been committed in the course of, and incidental to, the protests. The vast majority of those arrests were for obstruction of the highway and interfering and/or tampering with motor vehicles (those vehicles being fuel transport tankers).

12. As T/DCS Cronin explains in his witness statement, the *modus operandi* of the protestors is often to:

    a. sit or lay in highways, and often to glue themselves to the road or other road furniture, and obstruct the highway;

b. intercept fuel tanker lorries, climb aboard the same, and often glue or affix themselves, again obstructing the highway;

c. there were at least two instances of tunnelling adjacent to and underneath the highway (I note from the updating evidence, two significant tunnelling incidents occurred during the course of the August 2022 protests, which I will come to).

13. Over the Easter weekend (15-18 April 2022), the focus of the protest movement appeared to shift to central London. The protest groups associated with protest in the Borough announced a moratorium on protest/direct action on 19 April 2022, to last until 25 April 2022, upon which the protestors threatened to escalate their activity to 'phase 2A' (which was understood would include the obstruction of petrol forecourts (Cronin, [67]-[69]), should the Government not meet the protestors' demands. On the basis that the Government had not complied with the protestors' demands, the Claimants apprehended a recommencement and escalation of protest activity/ direct action on 25 April 2022, and sought urgent interim injunctive relief accordingly.

14. Both Mr Adesina and T/DCS Cronin deal at length in their witness statements with the harm caused, and apprehended, as a result of the direct action and protest activity in the Borough throughout April 2022.

15. In summary, Adesina1, dated 23 April 2022, [39]-[54] set out:

a. The impact that the first wave of protests had on stock levels at fuel forecourts. To that end, fuel levels below 30% are the threshold at which some stock outages are expected (ie. the forecourt pumps will run dry). From 1 April onwards there was a significant drop in stock levels at forecourt pumps – stock levels were at all times under 30%, dropping to as low as 20% at times in London and the South East of England and 19% in the East of England;

b. The critical services that Thurrock supplies (alongside the emergency services and other services, such as food transportation) which all rely on the availability of fuel, and the ability to move around the network without significant disruption and congestion;

c. The additional cost of £5,970.22 incurred by Thurrock in the provision of its waste collection services as a result of the disruption on the road network caused by the protestors;

d. Damage to the highway, and the required remedial works, caused by protestors tunnelling adjacent to, and underneath, the highway. Further, given the urgency of the remedial works, in at least one instance they could not be carried out to the preferred specification, such that there are long term concerns for the structure of the road;

e. Safety risks caused to both the protestors themselves and the inhabitants of the Borough (especially road users) as a result of the protests.

16. In Cronin, [40]-[64], T/DCS Cronin sets out other impacts and risks caused by the protests including:

a. The significant and unstainable drain caused by the protests on Police resources, specifically: officer rest days have been cancelled, shifts increased from 8 to 12 hours, mutual aid sourced from other Police forces to cover 4152 shifts, other operations have been cancelled and the general business of Essex Police affected;

b. The concerns for the security and safety of the Thurrock Fuel Terminals, especially given the hazardous, flammable and combustible materials stored at the Terminals, and which are also transported to and from the Terminals along the road network. There have been incidents of aggravated trespass associated with the protests, and disruption of the road network jeopardises ordinary operations at the Terminals;

c. The risks associated with, and to which the protestors and inhabitants of the Borough (including other road users) are exposed, by the protestors obstructing the highway by climbing on fuel tankers (which are carrying hazardous, flammable and highly combustible product), and locking themselves on to the same. Such incidents require the attendance of specialist Police Officers. In one extreme incident it took 3 days to remove a protestor from a tanker;

d. The risks associated with, and to which the protestors and inhabitants of the Borough (including other road users) are exposed, by the protestors stepping out onto busy A-roads and obstructing the highway;

e. The closure of Oliver Road, West Thurrock, a site at which tunnelling occurred, impacted 13 business, prevented 300 people travelling to work and cost £555,000 every day for which the road was closed.

17. The Claimants contend that each of these specific examples sit alongside the obvious disruption caused to the day-to-day lives of the inhabitants of the Borough who are impacted by congestion on the road network as a result of road closures, diversions and displaced traffic caused by the protests and the obstructions of the highway complained of.

18. At the return date hearing before His Honour Judge Simon (Sitting as a Deputy High Court Judge) in May 2022, the Claimants sought and obtained the continuation of the Injunction Order, which, in summary:

a. restrained acts of public nuisance (that being the obstruction of the highway) that have occurred in the Borough, and which were apprehended to recommence and escalate following the end of a moratorium on protest; and

b. restrained acts of trespass (and particularly the act of tunnelling under or adjacent to the highway) that have occurred in the Borough, and which were apprehended to recommence and escalate following the end of a moratorium on protest; and

c. restrained apprehended acts of public nuisance (that being the obstruction of the highway) and trespass in the County, which were apprehended to commence following the end of a moratorium on protest.

19. The judge reserved judgment, which was in due course handed down: [2022] EHWC 1324 (QB)**.** The reader is referred to that judgment for further detail.

20. Following the continuation of the Injunction Order, and between 23 August 2022 and 4 September 2022, the Claimants experienced a second wave of protests. This included obstruction of the highway (including protestors gluing themselves to the road) and protestors tunnelling under the highways; the tunnelling incidents were significant, with one tunnel under St Clements Way being occupied by protestors between 23 August and 4 September, causing Thurrock to seek and obtain an order for possession (which was not executed prior to the protestors leaving the tunnel voluntarily). The roads targeted were again the access roads to the oil terminals and adjacent industrial areas.

21. The details of the harm caused by, and the impact of, these protests are set out in Adesina3, [20]-[37], and Jennings, [21]. They cost Essex Police £304,543 (including funding extra officers, specialist officers, and support services); 1181 officers were assigned related duties, completing 12,224 hours of work; officers worked extended duties (increased to 12 hours from eight); and 216 officer rest days were cancelled.

22. There were a number of arrests for breaching the injunction, and committal proceedings followed.

23. As I have said, the injunction was further continued through 2023 and into 2024. Around the same time, the law on 'unknown person' or 'newcomer' injunctions was in a state of flux, which culminated in the Supreme Court's judgment in the *Wolverhampton Travellers* case, which was handed down on 29 November 2023.

Apprehension of future protests

24. The application before me was made because the Claimants apprehended future protests by Persons Unknown, unless the Injunction Order is continued. The reasons for this apprehension are set out in Adesina3, [45]-[51].

25. In summary, JSO announced a summer campaign targeting what they have described as the 'centre of the carbon economy', namely the airports and air travel. The Borough houses two fuel terminals that supply the aviation industry (Shell Haven and the Navigator Fuel Terminal). The Claimants apprehend that the fuel terminals that service the aviation industry will also be at risk of direct-action protest. The County also houses London Stansted Airport, and Southend Airport is located proximate to the Borough. At the date of the hearing the targeting of airports had already commenced (there having already been an incident at the private airfield at Stansted), and JSO branded the campaign against air travel as its 'most radical action yet'.

26. Mr Adesina says at [47]-[51] of Adesina3:

> "47. I also note from national media coverage that on 20 June 2024, two supporters of Just Stop Oil trespassed onto the airfield at London Stansted airport where private jets are parked, and sprayed an orange paint-like substance over two parked-up private jets.
>
> 48. The incident at London Stansted airport appears to be in keeping with Just Stop Oil's current target, as the group has announced its intention to target what it calls the 'centre of the

carbon economy' in the summer of 2024, by gathering at airports. The homepage to the Just Stop Oil website can be found at https://juststopoil.org, on which there is a link to a video that announces this intention, along with a photograph of a small jet plane being sprayed in what appears to be orange paint. I exhibit a PDF of the webpage at AA3/10.

49. The targeting of airports in the summer of 2024 is especially concerning to the Claimants for two reasons:

i. The Borough houses two fuel terminals that supply the aviation industry (Shell Haven and the Navigator fuel terminals). As the group has stated its intention to target the 'centre of the carbon economy', the Claimants reasonably apprehend that the fuel terminals that service the aviation industry are also at risk of direct-action protest. It is difficult to imagine that significant protest activity at sites as security-sensitive as airports will be tolerated, and those protests may well be displaced to the fuel terminals and surrounding areas, or the fuel terminals may fact themselves be the primary target of protest action. If the aim is to bring the aviation industry to a halt, targeting its fuel supply seems a logical way to achieve that aim; relatedly

ii. The County houses London Stansted airport. More concerning though is that Southend airport is located proximate to the Borough and its fuel terminals. It is entirely possible that displacement of the protestors from the airports could see the protests spill over into the Borough and the County, with a focus on the area around the fuel terminals.

50. The threat to target airports appears credible, not least because it has already happened at London Stansted. Further, I note that Just Stop Oil are holding a specific fundraiser to support the protest: https://chuffed.org/project/just-stop-oil-resisting-against-new-oil-and-gas (I exhibit a PDF of the webpage at AA3/14). The group state that "we're going so big that we can't even tell you the full plan, but know this – Just Stop Oil will be taking our most radical action yet this summer", and have set a fundraising target of £50,000 for this month.

51. As such, the Claimants reasonably apprehend that the threat to airports is credible and could lead to further protest activity in Thurrock and the County, which would cause further harm. The Claimants are anxious to avoid further protest activity and harm of the kind suffered in 2022."

27. In his statement, Mr Rulewski says:

"4. I exhibit at AR5/1 a pdf copy of the following webpage from the Just Stop Oil website: https://juststopoil.org/2024/07/10/paint-the-town-orange-just-stop-oil-wins-first-demand/. The webpage

appears in the 'press releases' section of the Just Stop Oil website, and is a news article dated 10 July 2024.

5. In that article, Just Stop Oil details how four of its supporters poured orange paint across three intersections of Parliament Square on the morning of 10 July 2024. According to the article, the action was taken following the election and formation of a Labour government, which has committed to ending oil and gas licensing, that being a core demand of Just Stop Oil (hence the statement that Just Stop Oil has 'won' its demand).

6. However, the article also goes on to explain that the meeting of the demand for no new oil and gas licensing is not enough; Just Stop Oil now also demand internationally co-ordinated action to phase out fossil fuels and end the extraction and burning of oil, coal and gas by 2030. The article ends with Just Stop Oil pledging keep pursuing direct action until its demands are met, and expressly states:

> 'This summer, areas of key importance to the fossil fuel economy will be declared sites of civil resistance around the world. Sign up to take action at juststopoil.org.'

Need for a Persons Unknown injunction

28. The need for a Persons Unknown injunction is set out in Adesina1, [17] and Adesina3, [52], and Rulewski, [16]. The primary concerns are:

    a. It has not yet been possible to identify all those persons who may be defendants to the Claim, despite the significant efforts made in this regard;

    b. Given the profile of the protestors and the protest groups associated with the protest in the Borough (including the size of the group, the fluctuation of the group, the fact that both Extinction Rebellion and Just Stop Oil are actively recruiting new members and that the protestors who are known have a profile of being from the length and breadth of the country) it is far more likely than not that people will attend the Borough and County to protest in the manner complained of who have not yet attended, and who would not otherwise be covered by the injunction without a persons unknown order.

29. I accept that in principle, and subject the requirements set out in *Wolverhampton Travellers* being satisfied, that this is an appropriate case for an injunction against Persons Unknown.

Legal principles

Approach on this application

30. The test for continuing the Injunction Order is the same as it is for a new injunction (which I consider below), albeit the review is focussed on the updated position as opposed to reviewing the historic position: *High Speed Two (HS2) Limited & Others v Persons Unknown* [2024] EWHC 1277 (KB)**,** [32]-[33], where Ritchie J said:

> "32. Drawing these authorities together, on a review of an interim injunction against PUs and named Defendants, this Court is not starting *de novo*. The Judges who have previously made the interim injunctions have made findings justifying the interim injunctions. It is not the task of the Court on review to query or undermine those. However, it is vital to understand why they were made, to read and assimilate the findings, to understand the sub-strata of the *quia timet*, the reasons for the fear of unlawful direct action. Then it is necessary to determine, on the evidence, whether anything material has changed. If nothing material has changed, if the risk still exists as before and the claimant remains rightly and justifiably fearful of unlawful attacks, the extension may be granted so long as procedural and legal rigour has been observed and fulfilled.
>
> 33. On the other hand, if material matters have changed, the Court is required to analyse the changes, based on the evidence before it, and in the full light of the past decisions, to determine anew, whether the scope, details and need for the full interim injunction should be altered. To do so, the original thresholds for granting the interim injunction still apply.

Claimants standing and cause of action

31. The Claimants bring these proceedings pursuant to the Local Government Act 1972, s 222, and the Highways Act 1980, s 130(5).

32. The Local Government Act 1972, s222 provides:

> "(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area –
>
> (a) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and …

33. The Highways Act 1980, s130(5) in extract provides:

> "Without prejudice to their powers under section 222 of the Local Government Act 1972, a council may, in the performance of their functions under the foregoing provisions of this section, institute legal proceedings in their own name, defend any legal proceedings and generally take such steps as they deem expedient."

34. The Police and Justice Act 2006, s 27, provides:

> "(1) This section applies to proceedings in which a local authority is a party by virtue of section 222 of the Local Government Act

> 1972 (c.70) (power of a local authority to bring, defend or appeal in proceedings for the promotion or protection of the interests of inhabitants in their area).
>
> (2) If the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may, if subsection (3) applies, attach a power of arrest to any provision of the injunction.
>
> (3) This subsection applies if the local authority applies to the court to attach a power of arrest and the court thinks that either –
>
> a. the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or
>
> b. there is a significant risk of harm to the person mentioned in that subsection."

35. The Claimants seek the continuation of the injunction (and associated power of arrest) pursuant to these provisions to prevent further and apprehended acts of public nuisance on the highway and trespass on the highway, including trespass by tunnelling under and adjacent to the highway.

Precautionary relief

36. The Claimants therefore seek a precautionary injunction (or *quia timet* injunction as they used to be known.)

37. The test for precautionary relief of the type sought by the Claimants is whether there is an imminent and real risk of harm: *Ineos Upstream Ltd v Persons Unknown* [2019] 4 WLR 100, [34(1)] (Court of Appeal) and the first instance decision of Morgan J: [2017] EWHC 2945 (Ch), [88]. See also *High Speed Two (HS2) Limited v Four Categories of Persons Unknown* [2022] EWHC 2360 (KB), [99]-[101]. 'Imminent' in this context simply means 'not premature': *Hooper v Rogers* [1975] Ch 43, 49. In *Canada Goose UK Retail Ltd v Persons Unknown* [2020] 1 WLR 2802, [82(3)], the Court of Appeal said:

> "(3) Interim injunctive relief may only be granted if there is a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief."

38. On the basis of the evidence I summarised earlier, and on all of the evidence, I was satisfied that this application was not premature and that, for the reasons I gave earlier, there is more than a real risk of tortious harm.

39. These being *ex parte* applications, the Claimants are under a duty to make full and frank disclosure, which I am satisfied they have fulfilled.

'Newcomer' or 'Persons Unknown' injunctions

40. As I explained earlier, the law in relation to this type of injunction was set out by the Supreme Court in *Wolverhampton Travellers*. In *Valero*, [58], *Multiplex,* [11], and *High Speed 2 (HS2) Limited,* [30], Ritchie J set out a list of factors derived from the Supreme Court's decision to be satisfied in the protest context (albeit in the former case in the context of a summary judgment application).

41. These factors provide a helpful guide and I propose to analyse the Claimants' application by reference to them (taken in particular how they were formulated in *Multiplex*; as Ms Holland pointed out, *Valero* was a summary judgment case and so slightly different).

42. In doing so, I bear firmly mind the overarching consideration that the Claimants must show a 'compelling need', satisfied by evidence, for a precautionary injunction to protect civil rights: *Wolverhampton Travellers*, [167(i)]; [188].

43. *Substantive requirements*: there must be a civil cause of action identified in the claim form and particulars of claim. The causes of action identified in this case are and trespass on the highway and adjoining land (principally by tunnelling) and public nuisance on the highway.

44. *There must be sufficient evidence before the Court to prove the claim*: this means more than the traditional 'serious issue to be tried' *American Cyanamid* test. It requires me to consider the ingredients of the pleaded torts, and then consider the evidence in this case and decide whether the claim has sufficiently strong prospects of success. I bear in mind that the Article 10 and 11 Convention rights of the protesters are engaged in this case (in relation to public nuisance) because what is sought to be injuncted so far as that is concerned involves assembly and protest on public land. (There is no right to protest on private land: see *High Speed 2 (HS2) Limited v Four Categories of Persons Unknown* [2022] EWHC 2360 (KB), [131]-[198]). This means that, *per* s 12(3) of the Human Rights Act 1998, in relation to public nuisance, no relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

45. I begin with trespass.

46. Trespass to land is the interference with possession or the right to possession, and includes instances in which a person intrudes upon the land of another without legal justification. It is a strict liability tort and damage is not necessary.

47. The law is clear that even where a person comes onto land with permission, where that person then does something on the land that he has not been given permission to do, he becomes a trespasser: *Jockey Club Racecourse Limited v Persons Unknown* [2019] EWHC 1026 (Ch); *Tomlinson v Congleton Borough Council and others* [2004] 1 AC 46.

48. It is therefore the case that even where the Persons Unknown have a licence to be on the highway, or land adjacent to it, once they exceed that licence by tunnelling, as has happened in the past and is justifiably feared for the future, they become trespassers because they do not have permission or any lawful justification for doing performing that activity.

49. Hence, the 229th Unknown Person Defendants are described thus:

> "PERSONS UNKNOWN WHO ARE TRESPASSING ON, UNDER OR ADJACENT TO THE ROADS LISTED AT ANNEXE 1 TO THE CLAIM FORM BY UNDERTAKING EXCAVATIONS, DIGGING, DRILLING AND/OR TUNNELLING WITHOUT THE PERMISSION OF THE RELEVANT HIGHWAY AUTHORITY"

50. From the evidence I set out earlier I am satisfied that the Claimants have realistic prospects of success and would be likely to obtain an injunction after trial.

51. To the extent the Persons Unknown might argue that their trespass is excused because they are exercising Convention rights protected by Articles 10 and 11, the exercise of those rights cannot normally justify a trespass: *Cuciurean v The Secretary of State for Transport and High Speed Two (HS2) Limited* [2021] EWCA Civ 359, at [9(1)] to [9(2)] per Warby LJ.

52. I now consider public nuisance.

53. It is well-established law that it is a public nuisance to obstruct or hinder the free passage of the public along the highway: *East Hertfordshire DC v Isobel Hospice Trading Ltd* [2001] JPL 597.

54. Public nuisance caused by way of the obstruction of the highway was considered in *Ineos Upstream Ltd v Persons Unknown* [2017] EWHC 2945 (Ch) at [42]-[46] and [64]-[65]. At [43-[45] Morgan J said:

> "43. Some obstructions of the highway will amount to a public nuisance. I did not hear detailed submissions as to what amounts to a sufficient obstruction of the highway for the purposes of public nuisance. Instead I heard submissions as to what would amount to an obstruction of the highway for the purposes of the criminal offence created by section 137 of the Highways Act 1980. The parties assumed that the same basic principles applied to the public nuisance and to the criminal offence.
>
> 44. The position in relation to actions which amount to an obstruction of the highway, for the purposes of public nuisance, is described in Halsbury's Laws, 5th ed. (2012) at para. 325 where it is said:
>
> (1) whether an obstruction amounts to a nuisance is a question of fact;
>
> (2) an obstruction may be so inappreciable or so temporary as not to amount to a nuisance;
>
> (3) generally, it is a nuisance to interfere with any part of the highway; and

> (4) it is not a defence to show that although the act complained of is a nuisance with regard to the highway it is in other respects beneficial to the public.
>
> The notes to para. 325 contain references to cases where the test for obstruction is variously described. Thus, it has been said that any wrongful act or omission upon or near a highway whereby the public is prevented from freely, safely and conveniently passing along the highway is a nuisance. An obstruction is caused where the highway is rendered impassable or more difficult to pass along by reason of some physical obstacle.
>
> 45. In *Harper v G N Haden & Sons* [1933] Ch 298 at 320, Romer LJ said:
>
> > 'The law relating to the user of highways is in truth the law of give and take. Those who use them must in doing so have reasonable regard to the convenience and comfort of others, and must not themselves expect a degree of convenience and comfort only obtainable by disregarding that of other people. They must expect to be obstructed occasionally. It is the price they pay for the privilege of obstructing others.'"

55. Obstruction of the highway may also be a criminal offence contrary to s 137(1), Highways Act 1980.

56. Injunction cases have considered public nuisance caused by obstruction and the s 137 offence side-by-side: see eg *Arla Foods Ltd v Persons Unknown* [2024] EWHC 1952 (Ch), [75], where Jonathan Hilliard KC sitting as a Deputy High Court judge said:

> "75. As in *Ineos* (above), the Claimants asked me to proceed on the basis that the same core principles applied to public nuisance and the criminal offence of obstructing the highway under section 137(1) of the Highways Act 1980. I am content to do so, and would expect the two to march hand in hand."

65. In *Ineos,* [65], Morgan J said that In order for there to be an offence under section 137 of the 1980 Act, it must be shown that:

> "(1) there is an obstruction of the highway which is more than *de minimis*; occupation of a part of a road, thus interfering with people having the use of the whole of the road, is an obstruction: *Nagy v Weston* [1965] 1 All ER 78 at 80 B-C;
>
> (2) the obstruction must be wilful, ie deliberate;
>
> (3) the obstruction must be without lawful authority or excuse; 'without lawful excuse' may be the same thing as 'unreasonably' or it may be that it must in addition be shown that the obstruction is unreasonable."

57. In *Harrison v Duke of Rutland* [1893] 1 QB 142 the plaintiff had used the public highway, which crossed the defendant's land, for the sole and deliberate purpose of disrupting grouse-shooting upon the defendant's land, and was forcibly restrained by the defendant's servants from doing so. The plaintiff sued the defendant for assault; and the defendant pleaded justification on the basis that the plaintiff had been trespassing upon the highway. Lord Esher MR held, at p 146:

> "on the ground that the plaintiff was on the highway, the soil of which belonged to the Duke of Rutland, not for the purpose of using it in order to pass and repass, or for any reasonable or usual mode of using the highway as a highway, I think he was a trespasser."

58. Plainly Lord Esher M.R. contemplated that there may be "reasonable or usual" uses of the highway beyond passing and repassing. He continued, at pp146–147:

> "Highways are, no doubt, dedicated prima facie for the purpose of passage; but things are done upon them by everybody which are recognised as being rightly done, and as constituting a reasonable and usual mode of using a highway as such. If a person on a highway does not transgress such reasonable and usual mode of using it, I do not think that he will be a trespasser."

59. Lopes LJ, by contrast, stated the law in more rigid terms, at p. 154:

> "if a person uses the soil of the highway for any purpose other than that in respect of which the dedication was made and the easement acquired, he is a trespasser. The easement acquired by the public is a right to pass and repass at their pleasure for the purpose of legitimate travel, and the use of the soil for any other purpose, whether lawful or unlawful, is an infringement of the rights of the owner of the soil …"

60. Similarly, Kay LJ stated, at p 158:

> "the right of the public upon a highway is that of passing and repassing over land the soil of which may be owned by a private person. Using that soil for any other purpose lawful or unlawful is a trespass."

61. This case, and the question of when and whether assembly on the highway is lawful was revisited by the House of Lords in *DPP v Jones* [1999] 2 AC 240. At pp254G-255A, Lord Irvine LC said (emphasis added):

> "The rigid approach of Lopes and Kay L.JJ. would have some surprising consequences. It would entail that two friends who meet in the street and stop to talk are committing a trespass; so too a group of children playing on the pavement outside their homes; so too charity workers collecting donations; or political activists handing out leaflets; and so too a group of members of

the Salvation Army singing hymns and addressing those who gather to listen.

The question to which this appeal gives rise is whether the law today should recognise that the public highway is a public place, on which all manner of reasonable activities may go on. For the reasons I have set out below in my judgment it should. *Provided these activities are reasonable, do not involve the commission of a public or private nuisance, and do not amount to an obstruction of the highway unreasonably impeding the primary right of the public to pass and repass, they should not constitute a trespass. Subject to these qualifications, therefore, there would be a right to peaceful assembly on the public highway."*

62. At p257D, Lord Irvine concluded:

"I conclude therefore the law to be that the public highway is a public place which the public may enjoy for any reasonable purpose, provided the activity in question does not amount to a public or private nuisance and does not obstruct the highway by unreasonably impeding the primary right of the public to pass and repass: within these qualifications there is a public right of peaceful assembly on the highway."

63. At p280D and p281C, Lord Clyde gave further insight into what will be viewed as unreasonable where he said (emphasis added):

"So far as the manner of the exercise of the right is concerned, any use of the highway must not be so conducted as to interfere unreasonably with the lawful use by other members of the public for passage along it. *The fundamental element in the right is the use of the highway for undisturbed travel***.** Certain forms of behaviour may of course constitute criminal actings in themselves, such as a breach of the peace. But the necessity also is that travel by the public should not be obstructed. The use of the highway for passage is reflected in all the limitations, whether on extent, purpose or manner. *While the right to use the highway comprises activities within those limits, those activities are subsidiary to the use for passage, and they must be not only usual and reasonable but consistent with that use even if they are not strictly ancillary to it.*

…..

In my view the argument for the defendants, and indeed the reasoning of the Crown Court, went further than it needed to go in suggesting that any reasonable use of the highway, provided that it was peaceful and not obstructive, was lawful, and so a matter of public right. Such an approach opens a door of uncertain dimensions into an ill-defined area of uses which might erode the basic predominance of the essential use of a highway as

a highway. I do not consider that by using the language which it used Parliament intended to include some distinct right in addition to the right to use the road for the purpose of passage."

64. Accordingly, I accept the Claimants' submission that the law in this area is as follows:

a. There is a right to peaceful assembly on the highway, but it must be remembered that the highway is more than just the carriageway. The assembly on the highway in *Jones*, was concerned with the grass verge;

b. That right does not extend so far as to allow the committing of a public nuisance;

c. While the right to use the highway comprises activities such as assembly on the highway, such activities are subsidiary to the use for passage, and they must be not only usual and reasonable but consistent with the primary use of the highway to pass and repass, if a person is deliberately interfering with the primary use to pass and repass, they are obstructing the highway;

d. That public nuisance may arise by the unreasonable obstruction of the highway, such as unreasonably impeding the primary right of the public to pass and repass;

e. Whether an obstruction of the highway is unreasonable is a question of fact, but will generally require that the obstruction is more than de minimis, and must be wilful.

65. I now have to consider two important recent decisions of the Supreme Court in this area, namely *DPP v Ziegler and others* [2022] AC 408 and *Reference by the Attorney General for Northern Ireland-Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2023] 2 WLR 33 which I refer to as the *Abortion Services* case. In this I have been greatly assisted by the judgment of Mr Hilliard KC in *Arla Foods Ltd.* I agree with his analysis and the following is gratefully adapted from his judgment.

66. In *Ziegler,* the defendants were charged with obstructing the highway, contrary to s 137 of the Highways Act 1980, by causing a road to be closed during a protest against an arms fair that was taking place at a conference centre nearby. The defendants had obstructed the highway for approximately 90 minutes by lying in the road and making it difficult for police to remove them by locking themselves to structures.

67. The defendants accepted that their actions had caused an obstruction on the highway, but contended that they had not acted 'without lawful … excuse' within the meaning of s 137(1), particularly in the light of their rights to freedom of expression and peaceful assembly under Articles 10 and 11 of the ECHR. The district judge acquitted the defendants of all charges, finding that the prosecution had failed to prove that the defendants' actions had been unreasonable and therefore without lawful excuse. The prosecution appealed by way of case stated, pursuant to s 111 of the Magistrates Courts Act 1980.

68. The Divisional Court allowed the prosecution's appeal, holding that the district judge's assessment of proportionality had been wrong. The defendant appealed to the Supreme Court. It was common ground on the appeal that the availability of the

defence of lawful excuse depended on the proportionality of any interference with the defendants' rights under Articles 10 or 11 by reason of the prosecution.

69. The Supreme Court allowed the defendants' appeal. It highlighted the features that should be taken into account in determining the issue of proportionality, as including: (a) the place where the obstruction occurred; (b) the extent of the actual interference the protest caused to the rights of others, including the availability of alternative thoroughfares; (c) whether the protest had been aimed directly at an activity of which protestors disapproved, or another activity which had no direct connection with the object of the protest; (d) the importance of the precise location to the protestors; and (e) the extent to which continuation of the protest breaches domestic law.

70. At [16] and [58], the Supreme Court endorsed the Divisional Court's formulation of what have become known as the '*Ziegler* questions', which must be considered where Articles 10 and 11 are engaged:

a. Is what the defendant did in exercise of one of the rights in Articles 10 or 11?

b. If so, is there an interference by a public authority with that right?

c. If there is an interference, is it 'prescribed by law'?

d. If so, is the interference in pursuit of a legitimate aim as set out in paragraph (2) of Articles 10 and 11, for example the protection of the rights of others?

e. If so, is the interference 'necessary in a democratic society' to achieve that legitimate aim?

71. This last question can be sub-divided into a number of further questions, as follows:

a. Is the aim sufficiently important to justify interference with a fundamental right?

b. Is there a rational connection between the means chosen and the aim in view?

c. Are there less restrictive alternative means available to achieve that aim?

d. Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?

72. Also, in *Ziegler*, [57], the Supreme Court said:

> "57. Article 11(2) states that 'No restrictions shall be placed' except 'such as are prescribed by law and are necessary in a democratic society'. In *Kudrevicius v Lithuania* (2015) 62 EHRR 34, para 100 the European Court of Human Rights ('ECtHR') stated that 'The term 'restrictions' in article 11(2) must be interpreted as including both measures taken before or during a gathering and those, such as punitive measures, taken afterwards' so that it accepted at para 101 'that the applicants' conviction for their participation in the demonstrations at issue amounted to an interference with their right to freedom of peaceful assembly.

> Arrest, prosecution, conviction, and sentence are all 'restrictions' within both articles."

73. I will need to say more about *Ziegler* later.

74. *Ziegler* was considered by the Supreme Court in *Abortion Services*. Lord Reed said at [22]-[23]:

> "22. Section 137 and the equivalent predecessor provisions have a long and specific history, and have been the subject of a great deal of judicial consideration. The approach adopted to section 137 and its predecessors for over a century prior to *Ziegler* was rooted in authorities which treated the question to be decided under the statute as similar to the question to be decided in civil nuisance cases of an analogous kind. On that basis, it was held that it was necessary for the court to consider whether the activity being carried on in the highway by the defendant was reasonable or not: see, for example, *Lowdens v Keaveney* [1903] 2 IR 82, 87 and 89. That question was treated as one of fact, depending on all the circumstances of the case: *Nagy v Weston* [1965] 1 WLR 280, 284; *Cooper v Metropolitan Police Commissioner* (1985) 82 Cr App R 238, 242 and 244.That approach accorded with the general treatment in the criminal law of assessments of reasonableness as questions of fact. In cases where the activity in question took the form of a protest or demonstration, common law rights of freedom of speech and freedom of assembly were treated as an important factor in the assessment of reasonable user: see, for example, *Hirst v Chief Constable of West Yorkshire* (1986) 85 Cr App R 143. That approach was approved, obiter, by members of the House of Lords in *Director of Public Prosecutions v Jones* [1999] 2 AC 240 (*Jones*), 258-259 and 290. Lord Irvine of Lairg LC summarised the position at p 255: "the public have the right to use the public highway for such reasonable and usual activities as are consistent with the general public's primary right to use the highway for purposes of passage and repassage". The same approach continued to be followed after the Human Rights Act entered into force: see, for example, *Buchanan v Crown Prosecution Service* [2018] EWHC 1773 (Admin); [2018] LLR 668.
>
> 23. That approach was not followed in the case of *Ziegler*. Although the case was argued before the Divisional Court in accordance with the established approach, and it was not suggested that that approach had resulted in an infringement of Convention rights, the Divisional Court embarked upon the exercise of interpreting section 137 in accordance with section 3 of the Human Rights Act: [2019] EWHC 71 (Admin); [2020] QB 253. It did so not only without the benefit of argument, but also without having considered whether the established interpretation of section 137, as stated for example by the Lord Chancellor in *Jones,* would result in a breach of Convention rights, contrary

> to the guidance given many times by this court (see, for example, *S v L* [2012] UKSC 30; 2013 SC (UKSC) 20; [2012] HRLR 27, para 15, and most recently *R (Z) v Hackney London Borough Council* [2020] UKSC 40; [2020] 1 WLR 4327, para 114)."

75. Of the Supreme Court's endorsement of the Divisional Court's approach, Lord Reed said at [26]:

> "26. On the subsequent appeal to this court, the decision of the Divisional Court was reversed. However, it was agreed between the parties, and this court accepted, that section 137 has to be read and given effect, in accordance with section 3 of the Human Rights Act, on the basis that the availability of the defence of lawful excuse, in a case raising issues under articles 10 or 11, depends on a proportionality assessment carried out in accordance with the approach set out by the Divisional Court: see paras 10-12 and 16. As that question is not in issue in the present case, we make no comment upon it."

76. As Lord Reed noted in *Abortion Services,* [27], one of the issues in dispute in the appeal in *Ziegler* was whether there can be a lawful excuse for the purposes of s 137 in respect of deliberate physically obstructive conduct by protesters, where the obstruction prevented, or was capable of preventing, other highway users from passing along the highway. Lord Hamblen and Lord Stephens concluded that there could be (Lord Reed noted that *Jones* was neither cited nor referred to). Lady Arden and Lord Sales expressed agreement in general terms with what they said on this issue.

77. In the course of their discussion, Lord Hamblen and Lord Stephens stated at [59]:

> "Determination of the proportionality of an interference with ECHR rights is a fact-specific enquiry which requires the evaluation of the circumstances in the individual case".

78. Of this passage, Lord Reed said this in *Abortion Services* at [28]-[29]:

> "28. … One might expect that to be the usual position at the trial of offences charged under section 137 in circumstances where articles 9, 10 or 11 are engaged, if the section is interpreted as it was in *Ziegler*; and that was the only situation with which Lord Hamblen and Lord Stephens were concerned. The *dictum* has, however, been widely treated as stating a universal rule; and that was the position adopted by counsel for JUSTICE in the present case.
>
> 29. That view is mistaken. In the first place, questions of proportionality, particularly when they concern the compatibility of a rule or policy with Convention rights, are often decided as a matter of general principle, rather than on an evaluation of the circumstances of each individual case. Domestic examples

include *R (Baiai) v Secretary of State for the Home Department* [2008] UKHL 53; [2009] 1 AC 287, the nine-judge decision in *R (Nicklinson) v Ministry of State for Justice* [2014] UKSC 38; [2015] AC 657, and the seven-judge decisions in *R (UNISON) v Lord Chancellor (Equality and Human Rights Commission intervening)* [2017] UKSC 51; [2020] AC 869 and *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26; [2022] AC 223."

79. In *Arla Foods Limited*, Mr Hilliard KC summarised the inter-relationship between *Ziegler* and *Abortion Services* (he calls it the *Safe Access Zones Bill Reference* case) as follows, and I agree:

> "82. In the *Safe Access Zones Bill Reference* case, Lord Reed, giving the judgment of the Court, considered that the Divisional Court in *Ziegler* should- before resorting to the special interpretative duty imposed by section 3 of the HRA- have considered whether the established interpretation of section 137, as stated for example by Lord Irvine in *Jones*, would result in a breach of Convention rights: [23]. However, given that the question of the need to apply in the context of section 137 the proportionality test set out in *Ziegler* was not before the Court, Lord Reed made no specific comment on it: [26].
>
> 83. What he did address was the comment in *Ziegler* at [59] that '[d]etermination of the proportionality of an interference with ECHR rights is a fact-sensitive enquiry which requires the evaluation of the circumstances in the individual case' He stated that while this might be the useful position in a criminal trial of offences charged under section 137 where Article 9, 10 or 11 rights were engaged, if the section was interpreted as it was in *Ziegler*, that would not universally be the case: [28]-[29]. Questions of proportionality, particularly where they concerned the compatibility of a *rule or policy* with ECHR rights, are often decided as a matter of general principle, rather than on an evaluation of the circumstances of each individual case: [29]. Further, it is possible for a piece of legislation to ensure that its application in individual circumstances will meet the proportionality requirements under the ECHR without any need for evaluation of the circumstances in the individual case: [34].
>
> 84. Therefore, when a defendant relies on Article 9, 10 or 11 in the defence of a protest-related defence, the Court should- if those articles are engaged- consider whether the ingredients of the defence themselves strike the proportionality balance: [55]. If it considers that they do not strike such a balance, the Court's duty under section 6 of the HRA is to consider whether there is a means by which the proportionality of a conviction can be ensured, whether through using the interpretative duty under section 3 in the case of construing the legislation creating a

> statutory offence or developing the common law where the offence arises at common law: [56]-[61].
>
> 85. In the present case, the Claimants accept, as explained above, that the requirements for public nuisance should be the same as those in section 137 of the Highways Act 1980. Therefore, on the face of it, the proportionality requirements set out in *Ziegler* would apply, and I consider that I should apply them given that Lord Reed made clear in *Safe Access Zones Bill Reference* that he was not specifically considering this point in the context of section 137.
>
> 86. The Claimants submit in relation to the injunction sought against persons unknown that it is not possible to apply the proportionality requirements under the ECHR to *specific individual* protestors because by definition the identity and circumstances of those individuals is not presently known. Rather at one should apply a proportionality test to the restrictions imposed by the draft order sought with future protests in mind. I accept that I should take the latter course."

80. I propose to adopt the same approach. It is, in substance, the approach which I took in *High Speed 2 (HS2) Ltd*, [197], when I considered the *Ziegler* questions in the context of threatened anticipated protests against HS2.

81. In *Ziegler*, Lords Hamblen and Stephens quoted, *inter alia*, [39] to [41] of Lord Neuberger MR's judgment in *The Mayor Commonalty and Citizens of London v Samede* [2012] EWCA Civ 160:

> "39. As the judge recognised, the answer to the question which he identified at the start of his judgment [the limits to the right of lawful assembly and protest on the highway] is inevitably fact sensitive, and will normally depend on a number of factors. In our view, those factors include (but are not limited to) the extent to which the continuation of the protest would breach domestic law, the importance of the precise location to the protesters, the duration of the protest, the degree to which the protesters occupy the land, and the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public.
>
> 40. The defendants argue that the importance of the issues with which the Occupy Movement is concerned is also of considerable relevance. That raises a potentially controversial point, because as the judge said, at para 155: 'it is not for the court to venture views of its own on the substance of the protest itself, or to gauge how effective it has been in bringing the protestors' views to the fore. The Convention rights in play are neither strengthened nor weakened by a subjective response to the aims of the protest itself or by the level of support it seems to command … the court cannot—indeed, must not—attempt to adjudicate on the merits of

> the protest. To do that would go against the very spirit of articles 10 and 11 of the Convention … the right to protest is the right to protest right or wrong, misguidedly or obviously correctly, for morally dubious aims or for aims that are wholly virtuous.'
>
> 41. Having said that, we accept that it can be appropriate to take into account the general character of the views whose expression the Convention is being invoked to protect. For instance, political and economic views are at the top end of the scale, and pornography and vapid tittle-tattle is towards the bottom. In this case the judge accepted that the topics of concern to the Occupy Movement were 'of very great political importance': para 155. In our view, that was something which could fairly be taken into account. However, it cannot be a factor which trumps all others, and indeed it is unlikely to be a particularly weighty factor: otherwise judges would find themselves according greater protection to views which they think important, or with which they agree. As the Strasbourg court said in Kuznetsov v Russia, para 45: 'any measures interfering with the freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles - however shocking and unacceptable certain views or words used may appear to the authorities—do a disservice to democracy and often even endanger it. In a democratic society based on the rule of law, the ideas which challenge the existing order must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means …' The judge took into account the fact that the defendants were expressing views on very important issues, views which many would see as being of considerable breadth, depth and relevance, and that the defendants strongly believed in the views they were expressing. Any further analysis of those views and issues would have been unhelpful, indeed inappropriate."

82. Lords Hamblen and Stephens reviewed in [71] to [86] of their judgment the factors which may be relevant to the assessment of the proportionality of an interference with the Article 10 and 11 rights of protestors blocking traffic on a road.

83. Disagreeing with the Divisional Court, they held that each of the eight factors relied on by the district judge in that case were relevant. Those factors were, in summary: (a) the peaceful nature of the protest; (b) the fact that the defendants' action did not give rise, either directly or indirectly, to any form of disorder; (c) the fact that the defendants did not commit any criminal offences other than obstructing the highway; (d) the fact that the defendants' actions were carefully targeted and were aimed only at obstructing vehicles heading to the arms fair; (e) the fact that the protest related to a 'matter of general concern'; (f) the limited duration of the protest; (g) the absence of any complaint about the defendants' conduct; and (h) the defendants' longstanding commitment to opposing the arms trade.

84. The context for this application is the evidence about what had already happened in the Claimants' areas from 2022 onwards as set out in the evidence I summarised

earlier. The past protests were not peaceful. They involved unlawful activity and arrests ensued, as described by T/DCS Cronin. They have put others at risk, and put themselves at very great risk because of the nature of the protests.

85. Turning to the four questions into which the fifth *Ziegler* proportionality question breaks down, I conclude as follows. Firstly, by committing trespass and nuisance, the Persons Unknown risk obstructing supplies of fuel which are vital to the economy, and risk causing the unnecessary expenditure of large sums of public money as well as other potential harm, all of which crystalised during the protests in 2022. In that context, I conclude that the aim pursued by the Claimants in making this application is sufficiently important to justify interference with the Defendants' rights under Articles 10 and 11, especially as that interference will be limited to what occurs on public land, where lawful protest will still be permitted. A single person holding a placard will not be caught by the injunction. Even if the interference were more extensive, I would still reach the same conclusion. I base that conclusion primarily on the considerable disruption caused by protests to date as described in the evidence.

86. Second, I also accept that there is a rational connection between the means chosen by the Claimants and the aim in view – namely to ensure the continued safe and efficient delivery of fuel. Prohibiting activities which interfere with that work is directly connected to that aim.

87. Third, there are no less restrictive alternative means available to achieve that aim. As to this, an action for damages would not prevent the disruption caused by the protests. The protesters are unlikely to have the means to pay damages for losses caused by further years of disruption, given the sums which the Claimants have had to pay to date. Criminal prosecutions are unlikely to be a deterrent, and all the more so since many defendants are unknown.

88. I have considered the geographical extent of the injunction and am satisfied that it is appropriate and not excessive.

89. Fourth, taking account of all of the factors which I have identified in this judgment, I consider that the injunction sought strikes a fair balance between the rights of the individual protestors and the general right and interests of the Claimants and others who are being affected by the protests, including the national economy. As to this: (a) on the one hand, the injunction only prohibits the defendants from protesting in ways that are unlawful. Lawful protest is not prohibited. Moreover, unlike the protest in *Ziegler*, the protests are not directed at a specific location but at multiple locations. which is the subject of the protests. They have caused repeated, prolonged and significant disruption to the activities of many individuals and businesses and have done so in relation to facilities which are important to the economy of this country. Finally on this, the injunction is to be kept under review by the Court, it is not without limit of time, and can and no doubt will be discharged should the need for it disappear.

90. Finally, drawing matters together, I am satisfied that the Claimants have demonstrated the requisite compelling need. They would obtain their injunction after trial.

91. I come back to the remaining *Multiplex* factors which I can deal with quite briefly.

92. *Whether there is a realistic defence*: I do not consider the Persons Unknown defendants would have a viable defence. Any argument based on the Convention would not succeed for the reasons I have given.

93. *The balance of convenience and compelling justification*: there is such a compelling justification for the reasons I have given. The balance of convenience favours the making of an injunction, with scope for review, variation or discharge should it no longer be necessary.

94. *Whether damages are an adequate remedy*: it is quite clear that damages could not be an adequate remedy for severe personal injury were a tanker to catch fire because of the protests. Furthermore, the Persons Unknown would be highly unlikely to satisfy a damages award of the size which would likely be awarded.

95. The terms of the injunction: the prohibitions must be set out in clear words and should not be framed in legal technical terms (like the word "tortious", for instance). This is satisfied both in the description of Persons Unknown and also in the order itself.

96. *Prohibitions must match the pleaded claim*: this is satisfied.

97. *The geographical boundaries must be clear*: this is satisfied. There are plans showing the areas covered.

98. The d*uration of any final injunction should only be such as is proven to be reasonably necessary to protect the Claimants' legal rights in the light of the evidence of past tortious activity and the future feared or quia timet tortious activity*: the injunction is time limited and there are provisions allowing for review, variation or discharge should the position change.

99. *Service*: this is provided for and I am satisfied the provisions are sufficient. This is a continuation of a pre-existing injunction.

100. *The right to set aside or vary*: this is provided for.

101. *Review*: this is provided for.

Conclusion

102. It was for these reasons that I granted the injunction.